

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

MICHAEL JOSEPH PHELPS,)	
)	
Petitioner,)	
)	
v.)	5:13-cv-0273-SLB-JEO
)	
CARTER DAVENPORT and the)	
ATTORNEY GENERAL OF)	
THE STATE OF ALABAMA,)	
)	
Respondents,)	

MEMORANDUM OPINION

This is an action on a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254 by Michael Joseph Phelps, an Alabama state prisoner acting *pro se*. (See Doc. 1). On April 16, 2014, the magistrate judge entered a report (Doc. 15) with findings and a recommendation that the court deny the petition, as well as the petitioner's associated motions for judgment. (Docs. 12 & 14). Phelps has now filed timely objections to the magistrate judge's report and recommendation. (Doc. 16).

Having carefully reviewed and considered *de novo* all the materials in the court file, including the findings and recommendation of the magistrate judge and the petitioner's objection thereto, the court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and his recommendation is ACCEPTED. Although Phelps's objections are voluminous, the court concludes that the arguments raised therein are adequately addressed by the magistrate judge's report and recommendation. In addition, the court would note that although the magistrate judge liberally construed Phelps's *pro se* filings as including a claim that

his guilty plea was invalid based on intoxication, Phelps has now affirmatively disclaimed that he was ever seeking federal habeas relief on that theory. (Doc. 16 at 9). Phelps's objections are OVERRULED. As a result, this action is due to be DISMISSED WITH PREJUDICE.

Furthermore, because the petition does not present issues that are debatable among jurists of reason, the court concludes that a certificate of appealability is also due to be DENIED. *See* 28 U.S.C. § 2253(c); *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000); Rule 11(a), RULES GOVERNING § 2254 PROCEEDINGS.

A separate final judgment will be entered.

DONE this 13th day of May, 2014.

A handwritten signature in black ink, reading "Sharon Lovelace Blackburn". The signature is written in a cursive, flowing style.

SHARON LOVELACE BLACKBURN
UNITED STATES DISTRICT JUDGE